

March 17, 2009

EDITORIAL

On Signing Statements

As a candidate, Barack Obama offered withering criticism of President Bush's signing statements — declarations that he would not enforce parts of the bills he signed. So it was encouraging when President Obama invalidated the Bush signing statements last week and explained when he would issue statements of his own.

If Mr. Obama lives up to the principles he outlined last week, he could roll back the excessive powers that Mr. Bush claimed for his presidency, but the new president quickly issued a signing statement of his own that made us wonder just how clean a break he intended to make.

Presidents have long issued signing statements, but Mr. Bush used them with unprecedented frequency and brazenness. When he signed a torture ban in 2005, he made a groundless assertion that he could override Congress and the courts on a major part. In 2006, the American Bar Association called on presidents not to issue statements that claimed the right not to enforce the law.

In principle, a president should veto a bill if he believes part of it is unconstitutional. But Mr. Obama's memo raised a legitimate concern: that Congress these days often passes omnibus bills. If a big bill has only a few problematic parts, a president has to choose between vetoing the whole bill, or agreeing to enforce provisions he believes to be unconstitutional.

Mr. Obama said he would try to work with Congress to address constitutional concerns in advance. Once a bill passes, he said, he would object only over "interpretations of the Constitution that are well founded."

These are good policies, but the real test will be in how they are applied. Mr. Obama should not use signing statements, as Mr. Bush did, to assert that his own interpretation of the Constitution trumps those of Congress and the courts. If he wants to claim that his objection is "well founded," then he should be able to point to court decisions or he should find a way to get the issue into court so the judiciary can make a call.

Mr. Obama's first signing statement objected to parts of a recent spending bill that he signed. Most of his points were not particularly troubling. Mainly, they focused on provisions that attempt to micromanage decisions that legitimately belong to the president. None comes close to Mr. Bush's sweeping assertions of power.

Still, Mr. Obama's statement may not be entirely innocuous. One somewhat unclear objection could be read as bumping up against the rights of executive branch whistle-blowers. In any case, the speed with which he issued the statement, and the number of provisions he objected to, raise concerns that he may use these statements too aggressively. It will bear watching.

For eight years, the Bush team did its best to disrupt the founders' careful allocation of power among the president, Congress and the courts. President Obama's goal should be to restore that delicate balance.

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